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notice, the occupants refuse to remove the same, and providing, not only for reasonable notice, but an opportunity to be heard before the board of fisheries, and making its decision conclusive of all controversies with respect to the same, provides due process of law, so that an order of such commission, requiring the surrender of certain natural oyster beds, was not objectionable, as depriving the complainant of its property without due process of law.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 823; Dec. Dig. § 278.* 10 Va.-W. Va. Enc. Dig. 624.]

Judgment reversed. All the judges concur.

SAVAGE *v.* CAUTHORN et al.

June 10, 1909.

[64 S. E. 1052.]

1. Appeal and Error (§ 569*)—Record—Statement of Facts—Signing.—Where an order overruling a motion to set aside the judgment and grant a new trial, bill of exceptions, and statement of facts as set out in the record were all of the same date, and clearly made up and signed by the judge at the same time in open court, and certified by the clerk, the fact that the judge signed his name at the end of the bill of exceptions, and also at the end of the statement of facts which immediately followed, when his signature only at the end of the statement of facts would have been sufficient, would not exclude from the record the statement of facts.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 569.* 5 Va.-W. Va. Enc. Dig. 386, 392.]

2. Contracts (§ 62*)—Consideration—Sufficiency.—Plaintiff took an option signed by the owner of land and her husband for the purchase of land. The owner and husband conveyed it to plaintiff by deed with general warranty of title, and plaintiff reconveyed to a trustee to secure payment of purchase-money notes. There was at the time a trust deed of prior date on record, of which plaintiff had actual and constructive notice, executed by the owner and husband. At the time of plaintiff's purchase there was an alleged promise of the owner's husband and the trustee under plaintiff's trust deed that plaintiff's first two payments should be used in paying the debt secured by the prior trust deed. This was not done, and plaintiff refused to make subsequent payments. The trustee sold the land under the trust deed to the former owner for the amount of plaintiff's unpaid purchase-money notes. Subsequently plaintiff was dispossessed by ejectment proceedings. Held, that plaintiff could not recover the

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

amount paid on the land against the husband of the owner and the trustee for breach of the promises to apply her payments to satisfaction of the former trust deed, there being no consideration therefor alleged or proved, the wife being the sole owner of the land.

[Ed. Note.—For other cases, see Contracts, Dec. Dig. § 62.* 3 Va.-W. Va. Enc. Dig. 339, 343.]

3. Deeds (§ 94*)—Merger of Contract in Deed.—Fact that both the owner and her husband signed the option taken by plaintiff to purchase the land would not aid the cause of action for breach of the husband's promise, as the dealings between the parties culminated in the deed to plaintiff and her deed to secure deferred payments.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 266; Dec. Dig. § 94.* 9 Va.-W. Va. Enc. Dig. 786; 13 Id. 496.]

4. Covenants (§ 102*)—Warranty—Breach.—The covenants in plaintiff's deed of general warranty of title would not avail her, as she was not evicted by a paramount title.

[Ed. Note.—For other cases, see Covenants, Cent. Dig. § 157; Dec. Dig. § 102.* 3 Va.-W. Va. Enc. Dig. 762.]

Judgment affirmed. All the judges concur.

NEW YORK, P. & N. R. CO. *v.* WILSON'S ADM'R.

June 10, 1909. On Rehearing, June 24, 1909.

[64 S. E. 1060.]

1. Evidence (§ 507*)—Opinion Evidence—Expert Testimony.—How far a red lantern used as a railroad danger signal could be observed on a foggy morning is not a matter of expert knowledge requiring expert testimony, being a matter resting on common experience.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 507.* 5 Va.-W. Va. Enc. Dig. 792.]

2. Evidence (§ 483*)—Opinion Evidence—Matters of Common Knowledge.—In an action for a railroad fireman's death by the collision of his train with a freight train which was standing still because plaintiff's train crew did not observe a red light signal sent back by the freight train crew, a witness who was on the freight train the morning of the accident, and saw the fog and the signal lanterns, could testify how far such lantern could be observed under the circumstances; that being a matter depending upon common experience.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 483.* 5 Va.-W. Va. Enc. Dig. 793.]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.